

From: [Bobby Mims](#)
To: [Locker, Ryan \(USATXE\)...](#)
Subject: [EXTERNAL] Matters to Consider in the Joint Final Pretrial Report
Date: Wednesday, April 19, 2023 8:01:27 AM
Attachments: [Proposed Stipulations - HERNDON 1 Defendant's Response.docx](#)
[Business Records Notice - HERNDON, Dez Defendant's response.docx](#)

Ryan,

Please consider the following in preparing the Joint Final* Pre-trial Report:

PROPOSED STIPULATIONS:

I need to revisit the stipulation agreement that we discussed earlier. I have attached a copy of the stipulation with the defendant's conditions. No changes in our prior agreement on this will unduly hamper the Government in its proof of facts rather than by stipulation. Also, the authenticity agreement on most of the other 902 notices will cover part of the proof regime.

NOTICE OF INTENT TO OFFER RECORDS PER FRE 902

I have attached a copy of this notice with comments in which almost all are not objected to for authenticity. However, the defense is reserving other objections. As to the jail calls, the defense will object to authenticity, relevance, hearsay, and Rule 403. Please refer to the italicized comments in the margins following each notice.

PRELIMINARY JURY INSTRUCTIONS:

No objections to additions

PROPOSED JURY INSTRUCTIONS:

Possible objections to #8, #9, #12, #12 (let's discuss)

Also, could you clarify how the forfeiture provision is tied to count 5? Is it because of the allegation that MV5 was under 14yo?

DEFENDANT'S WITNESS:

I have identified no witnesses for the defense.

DEFENSE EXHIBITS:

I have identified no exhibits that I plan to introduce at trial. I assume that the Government will present the jail evidence during the case-in-chief.

PENDING MOTIONS:

I have five (5) pending motions in limine. One is directed to co-conspirator testimony, which I will need a hearing on before any co-conspirator testimony is given. I understand that, as of this date, the Government does not plan to use co-defendant/co-conspirator testimony, so the Court may carry this motion. Your thoughts?

VOIR DIRE:

I am unsure how much time Judge Barker permits for counsel on voir dire. I believe that he limited counsel to 20 minutes in a recent trial. I plan to submit some defense-directed voir dire and will ask for 30 minutes.

PROBABLE LENGTH OF TRIAL:

I defer to the Government on this estimate.

TRIAL MANAGEMENT PROCEDURES:

I defer to the Government on this proposed procedure. I do not have any discovery disputes, demonstrative aids, or any other issues at this time.

TRIAL BRIEFS:

I plan to file a trial brief but still need to prepare it.

This is the best that I can do right now. Will you prepare the Joint Final Pretrial Report, as you have the most input for the Court? Necessarily, we are in a more passive role. (*Look at your style on the Government's Witness List and correct the defendant's name*).

I appreciate the hard work that you have done preparing this case for trial. I hope you also understand that I will agree with any issue that I can consistent with my obligation to provide zealous representation of Mr. Herdon and effective representation of counsel.

I will be available to talk about any issues after 9:30 AM.

Regards,

Bobby Mims

* I may have to amend some of the material in this "final" PT Report

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